IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.
No. 554

LAWRENCE ROBINSON,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

BRIEF OF APPELLEE.

ROGER ARNEBERGH,
City Attorney,

PHILIP E. GREY,
Assistant City Attorney,

WM. E. DORAN,
Deputy City Attorney,

400 City Hall,
Los Angeles 12, California,

Attorneys for Appellee.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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The statute is not "ex post facto," particularly as to appellant who makes no claim that it has been so applied to him.

Section 11721 does not impose cruel or unusual punishment within the long understood meaning of the term.

Appellant was not subjected to unreasonable search and seizure. Rather, any search of appellant was incident to a lawful arrest under California's statutes and judicial declaration of the exclusionary rule. California's enforcement of the exclusionary rule affords defendants the protection of the Fourteenth and Fourth Amendments under *Mapp v. Ohio.*

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PEOPLE OF THE STATE OF CALIFORNIA,

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BRIEF OF APPELLEE.

Reference to Official Reports.

This is a direct appeal from a final judgment entered March 31, 1961, by the Appellate Department of the Superior Court of the State of California, for the County of Los Angeles.

The opinion of the court is not reported. It appears at page 111 of Transcript of the Record in this appeal and a copy is appended hereto (Appendix A).

Statutes Involved in the Case.

The statutes involved in the case in the order of their consideration in the brief, are:

Section 11721 of the California Health and Safety Code (Appendix B);

Section 5350 of the California Welfare and Institutions Code (Appendix C);

Section 23105 of the California Vehicle Code (Appendix D);

Section 24250 of the California Vehicle Code (Appendix E);

Section 24601 of the California Vehicle Code (Appendix F);

Section 40800 of the California Vehicle Code (Appendix G);

Section 625 of the California Vehicle Code (Appendix H);

Section 11500 of the California Health and Safety Code (Appendix I);

Section 836 of the California Penal Code (Appendix J).

Statement of the Case.

Appellant was charged in a verified complaint, filed in the Municipal Court of the Los Angeles Judicial District, with having committed, on February 4, 1960, a violation of Section 11721 of the Health and Safety Code of the State of California, a misdemeanor. The statute reads as follows:

"No person shall use, or be under the influence of, or be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county

jail. The court may place a person convicted hereunder on probation for a period not to exceed five years and shall in all cases in which probation is granted require as a condition thereof that such person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this section from the obligation of spending at least 90 days in confinement in the county jail." (As amended California Statutes of 1957, c. 1064, p. 2343, Sec. 1.)

Appellant was duly arraigned, entered a plea of not guilty and requested a jury trial. The cause was tried in the Municipal Court, Los Angeles Judicial District. The prosecution's case was presented as follows:

Lawrence E. Brown, a police officer of the City of Los Angeles, testified that on February 4, 1960, at approximately 9 P.M., he observed a Nash automobile southbound on Serrano Street between 12th Street and 12th Place traveling at approximately 10 to 15 miles per hour [Tr. 16]. The vehicle had no rear license plate illumination and the officer was unable to read the license number. The officer pulled up to the automobile, whereupon it stopped and a Mr. Charles Banks, the driver, alighted from the vehicle. Mr. Charles Banks had his sleeves rolled up above the elbow and the officer observed that on the inside of his left arm at the crook of the elbow he had what appeared to be a fresh needle mark [Tr. 17].

Then to a question concerning the appearance of *appellant's* arms, appellant interposed an objection raising the reasonableness and legality of the "arrest"; in effect, putting the prosecution to its burden of establishing that the evidence about to be introduced was

not obtained by an illegal search and seizure, California having adopted the exclusionary rule of illegally obtained evidence, *People v. Cahan* (1955), 44 Cal. 2d 434, 282 P. 2d 905. Such being a matter of law only *(People v. Gorg* (1955), 45 Cal. 2d 776, 291 P. 2d 469), the jury retired from the courtroom and the trial of this issue continued before the court [Tr. 18].

It was established that the officers did not have a search warrant [Tr. 18].

When the car was pulled over by the officers, Mr. Brooks was not ordered out of the car but got out voluntarily [Tr. 22] and met Officer Brown at a point between the two vehicles [Tr. 23]. Officer Brown (having seen the needle mark) spoke to Mr. Banks, who stated he used narcotics and had used them a short time prior to the time the officers stopped him, some matter of days [Tr. 20]. Mr. Brooks was then arrested and Officer Brown's partner, Officer Wapato, got the other three parties, two females and appellant Robinson, out of the vehicle and lined them up abreast of each other in front of a building. Officer Brown cursorily searched appellant for offensive weapons [Tr. 23]; finding none he then questioned appellant regarding his nervous condition and asked him if he used narcotics. Appellant answered "Yes, I use narcotics" and further stated that he wasn't hooked, that he hadn't used narcotics in approximately two months, that his friends came by his house and he used their narcotics, their outfits; that he had never bought narcotics. He then stated that he hadn't used narcotics in two weeks [Tr. 24].

Officer Brown then asked to look at appellant's arms and ordered him to take off his coat and roll up the

sleeves of his shirt. Officer Brown then saw scar tissue and discoloration on the inside of appellant's right arm and numerous fresh needle marks on the inside of his left arm and also a fresh scab [Tr. 24]. Appellant was nervous and perspiring and his eyes were pinpointed and glassy on examination by a flashlight and in comparison with Officer Wapato's eyes [Tr. 25].

Following defense testimony on the issue, the court found that the police had not engaged in any illegal search or seizure [Tr. 40-43, 49-52], whereupon the jury was brought in and the trial on the merits proceeded [Tr. 52].

Officer Lawrence E. Brown resumed the stand and testified that he examined appellant's arms and observed that he had scar tissue and discoloration on the inside of the right arm. On the left arm he had what appeared to be numerous needle marks and a scab which was approximately three inches below the crook of the elbow on the inside of the arm [Tr. 53].

Theodore M. Lundquist, called as a witness on behalf of the People, testified that he was a police officer for the City of Los Angeles and had been attached to the Narcotics Division of the Los Angeles Police Department for approximately eleven years [Tr. 54]. He was duly qualified as an expert in the field of narcotics addiction [Tr. 54-56], and further testified that on February 5, 1960, at approximately 10:15 A.M., he examined appellant's arms. In the area of the inner right elbow there were two scabs over a vein. In the area of the inner left elbow there was discoloration over a vein bearing five scabs, and further down the forearm, approaching the wrist and following the vein coursing toward the outer arm from the inner side

to the outer side of the arm, there was multi-discoloration [Tr. 56]. It was the opinion of Officer Lundquist that said marks and the discoloration were the result of the injection of unsterile hypodermic needles into the vein and that a narcotic was injected into the vein [Tr. 58]. Also, that the scabs appearing on the inner right elbow area were estimated to be approximately ten to fifteen days old and the scabbing appearing in the inner left area was estimated to be approximately three to ten days old [Tr. 59].

In a conversation with Officer Lundquist regarding the use of drugs, appellant stated that he had begun using narcotics approximately four months prior, that he had vomited after his first fix and that he still vomited after the injection of a narcotic if he had eaten beforehand. He had been using cottons given to him about three or four times a week and had started using powder about two months prior. He had his last fix on Wednesday night (a week previous) when he and a friend split an eight-dollar bag at a gas station at 54th and Central Avenue in the City of Los Angeles. The substance used for the fix had been heroin [Tr. 60-61].

Officer Lundquist testified that these statements made by appellant in connection with the use of drugs were made voluntarily without any promise or threats. He explained that by the use of a "cotton" the impurities are strained from the heroin solution and after it dries it can be resaturated and that liquid used. If it hasn't dried it can be squeezed and the fluid left in the saturated cotton can be used. He further explained that "powder" is the narcotic in the form it is purchased, and before it can be injected it must be put into a liquid form; that an "eight-dollar bag" repre-

sented approximately three grains of the narcotic [Tr. 60-61].

Officer Lawrence Brown resumed the stand and repeated to the jury the statements made by appellant prior to his arrest regarding his use of narcotics [Tr. 64].

Following the defense the court duly instructed the jury [Tr. 86-108]. A verdict of guilty was returned [Tr. 108].

An appeal was taken from the order granting probation and order denying motion for new trial to the Appellate Department of the Superior Court for the County of Los Angeles. Briefs were filed, oral argument presented, and the matter submitted. The orders granting probation and denying motion for new trial were affirmed [Tr. 111-113], and a subsequent petition for rehearing was denied [Tr. 113].

The Appellate Department of the Superior Court in its opinion affirming the order granting probation and order denying motion for new trial invited appellant to test his contentions of unconstitutionality by habeas corpus in the District Court of Appeal and the Supreme Court of the State of California [Tr. 112]. Appellant obliged and sought such writs.

On May 2, 1961, the District Court of Appeal of the State of California, Second Appellate District, denied without opinion the petition for writ of habeas corpus. *(In re Robinson,* 191 A. C. A. No. 3, page 5 of Minutes.) A similar denial occurred on May 29, 1961, when appellant took his petition for writ of habeas corpus to the California Supreme Court. *(In re Robinson,* 56 A. C. No. 1, p. 3 of Minutes.)

Summary of Argument.

California's regulation of the use of dangerous and habit forming drugs under Section 11721 of the Health and Safety Code is a valid exercise of the police power.

Section 11721 of the California Health and Safety Code is not violative of the Fourteenth Amendment merely because it punishes the existence of a *status,* addition to narcotics, rather than an act or omission. Punishment of a status has always been an accepted concept of English and American jurisprudence.

The punishment of such status is not a punishment of an *involuntary* status. It was willfully and voluntarily developed from its inception.

The fact that addicition to narcotics may be a mental and physical illness does not result in constitutional immunity from punishment.

Section 11721 of the California Health and Safety Code is not unconstitutionally vague or indefinite. Rather it gives more than adequate guidance to those who would be law-abiding.

Such statute does not encourage subjection to double jeopardy. Furthermore, appellant has not been so subjected or threatened and is not in a position to raise the issue.

The statute does not restrict constitutional freedom of movement, particularly as to appellant, who again is not so situated as to raise the issue.

ARGUMENT.

I.

Section 11721 of the California Health and Safety Code Is a Proper Exercise of the Police Power.

The regulation of the use of narcotics by the State is clearly a proper exercise of the police power. As stated by this Court in *State of Minnesota ex rel. Whipple v. Martinson* (1920), 256 U. S. 41, 45, 65 L. Ed. 819, 822:

> "There can be no question of the authority of the state in the exercise of its police power, to regulate the administration, sale, prescription, and the use of dangerous and habit forming drugs. . . . The right to exercise this power is so manifest in the interest of the public health and welfare, that it is unnecessary to enter upon a discussion of it beyond saying that it is too firmly established to be successfully called in question."

California courts have repeatedly noted the evils of illegal use of narcotics.

In *In re Hallawell,* 8 Cal. App. 563, 97 Pac. 320, it was stated:

> "The unlawful use of narcotic drugs often tends to moral, mental and physical destruction."

And in *People v. Bill,* 144 Cal. App. 389, 394-395, 35 P. 2d 645:

> "The court will take judicial notice of the fact that the inordinate use of a narcotic drug tends to create an irresistible craving and forms a habit for its continued use until one becomes an addict, and he respects no convention or obligation and will lie, steal, or use any other base means to gratify his passion for the drug, being lost to all considerations of duty or social position."

II.

Section 11721 of the California Health and Safety Code Does Not Violate the Provisions of the Fourteenth Amendment to the United States Constitution.

A. Section 11721 of the California Health and Safety Code Does Not Violate the Fourteenth Amendment to the United States Constitution Because It Punishes a "Status."

Appellant, in contending that Section 11721 of the California Health and Safety Code violates the Fourteenth Amendment to the Constitution of the United States, first argues that it does so because it punishes a status rather than an act or omission.

There is nothing novel about the punishment of a status. The maintenance of an unlawful status falls directly within long accepted definitions of what constitutes crime.

The punishment of a status has always been an accepted concept of English and American jurisprudence, most often appearing in that general field of crime known as vagrancy (See, Blackstone, 4 Commentaries 170, Jones Ed. 1916). And whether a particular category of vagrancy is grounded upon negative action or iterative positive action, it has reference to socially-unacceptable behavior (See, *Commonwealth v. Parker*, 86 Mass. 313, 314).

The question of "status" crimes has appeared in many state court decisions involving vagrancy statutes, wherein vagrancy had been referred to as a "status." For example, a California court, in *People v. Babb*, 103 Cal. App. 2d 326, 328, 229 P. 2d 843, stated:

> "All that is meant by saying vagrancy is a status is that it is a present condition; that the

statute can be applied only to the persons who meet the description at the time the offense was committed."

The court also pointed out, at page 328:

"A general course of conduct, practices, habits, mode of life or status, that is prejudicial to the public welfare may be prohibited by law and punishment imposed therefor. Every course of conduct or practice or habit or mode of life or status which falls within this class of wrongs is connoted by the term 'crime'." (Citing *Bopp v. Clark,* 165 Iowa 697 [147 N. W. 172]. Ann. Cas. 1916E 417, 419, 52 L. R. A. (N. S.) 493, 495.)

Vagrancy statutes "being (statutes) in the exercise of the police power, are generally looked upon as regulatory measures to prevent crime rather than ordinary criminal laws which prohibit and punish certain acts as crimes."

People v. Belcastro (1934), 256 Ill. 144, 148, 190 N. E. 301, 303.

"Society recognizes that vagrancy is a parasitic disease, which, if allowed to spread, will sap the life of that upon which it feeds. To prevent the spread of the disease, the carrier must be reached. In order to discourage and, if possible, to eradicate vagrancy, our Legislature has enacted a statute defining vagrant persons and penalizing them according to its terms. We see no reason why this cannot, or should not, be done as a valid exercise of the police power."

State v. Harlowe (1933), 174 Wash. 227, 233, 24 P. 2d 601, 603.

> "The principle exemplified in . . . vagrancy statutes presupposes a criminal status, not due to the perpetration of a specific offense, presently or in the past, but rather by reason of an intent, sufficiently manifested by overt acts, to commit offenses in futuro. . . ."
>
> *State v. Gaynor*, 119 N. J. L. 582, 587, 197 Atl. 360, 363.

Thus it has repeatedly been held by the state courts that punishment may be imposed for the existence of a status. See also: *People v. Arlington* (1951), 103 Cal. App. 2d 911, 229 P. 2d 495; *Handler v. Denver* (1931), 102 Colo. 53, 77 P. 2d 132; *Commonwealth v. Diamond* (1924), 248 Mass. 511, 143 N. E. 503; *Cox v. State* (1918), 84 Tex. Cr. 49, 205 S. E. 131; *Williams v. State*, 27 Ala. App. 540, 176 So. 312; *Ex parte Oats* (1921), 91 Tex. Cr. 79, 238 S. W. 931; *State v. Susnan* (1943), 216 Minn. 293, 12 N. W. 2d 260). And the federal courts are in accord, as stated by the United States Court of Appeals, District of Columbia, in *District of Columbia v. Hunt* (1947), 163 F. 2d 833, 835:

> "A vagrant is a probable criminal; and the purpose of the statute is to prevent crimes which may likely flow from his mode of life. Hence the statute denounces and makes punishable being in a condition of vagrancy rather than . . . the particulars of conduct enumerated in the statute as evidencing or characterizing such condition."[1]

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[1]For comprehensive treatises on vagrancy and its "status," see:
Prof. Rollin M. Perkins "The Vagrancy Concept," The Hasting Law Journal (University of California), Vol. 9, p. 238 (May 1958);
Forrest W. Lacey "Vagrancy and Other Crimes of Personal Condition," 61 Harvard Law Review 1203.

This statement of the United States Court of Appeals is particularly significant in the light of the part played by narcotics in the crime picture of California.

While Section 11721 of the California Health and Safety Code proscribes three acts (use of, under the influence of, or addicted to, narcotics), the establishment of either being sufficient for conviction, it is the *addition* that constitutes the practical teeth of the section. This because, if the offender is actually apprehended in the act of *using* a narcotic of the character involved in the instant case, he is also apprehended in *possession* of such narcotic, a *felony* in California (Appendix I), and is so charged. As a practical matter, use under Section 11721 is thus established only by admission of the defendant. Although such admissions do occur, the instant case being an example, by the nature of things they are most frequently obtained when the circumstantial evidence of addition is already overwhelming.

The act of being under the influence of narcotics is, by its nature, difficult to prove beyond a reasonable doubt as the act constituting the violation. Taken by itself it can be too easily confused with manifestation of other physical conditions.

It is the proof of addiction by circumstantial evidence, the control of the "probable criminal" (*District of Columbia v. Hunt, supra*) by the tell-tale track of needle marks and scabs over the veins of his arms, that remains the gist of the section.

It appears most significant that in spite of the vigor with which appellant urges that a status as such cannot be constitutionally punished as a crime, he has been unable to cite a single case in which a court has so held.

B. Section 11721 of the California Health and Safety Code Does Not Violate the Fourteenth Amendment to the Constitution of the United States Because it Punishes a Status That Is "Involuntary."

Appellant next argues that the status complained of is *involuntary* in nature. This is preposterous. Certainly that first puncturing of the veins of the body and the shooting into them of that foreign poison was a voluntary act done with knowledge of the probable result. So with the second and third and subsequent injections. The fact that the resultant craving of his addiction may force the addict to resort to theft, robbery and murder to support his expensive habit, does not make such status involuntary. It was voluntary from its inception. A single act of injection does not make a man an addict, it is true, but if he is incarcerated for habitually using the narcotic to the point of addiction, it would be absurd to say his punishment is not because of anything he has *done*.

C. Section 11721 of the California Health and Safety Code Is Not Violative of the Fourteenth Amendment to the Constitution of the United States Because it Punishes "a Condition of Mental and Physical Illness."

Of course it is generally conceded that a narcotic addict, particularly one addicted to the use of heroin, is in a state of mental and physical illness. So is an alcoholic. So is the arsonist who sets fires for the thrill of the flame the victim of a mental illness, pyromania. The uncontrollable urge of the kleptomaniac to steal makes a thief of an often otherwise respectable person. Yet certainly these crimes must subject their perpetrators to punishment in spite of the fact that they are associated with an illness. In urging that the pun-

ishment of a condition of mental and physical illness violates the Fourteenth Amendment to the United States Constitution appellant cites no judicial authority to support his position.

D. Section 11721 of the California Health and Safety Code Is Not Unconstitutionally Vague or Indefinite.

The terms of the statute attacked as vague and indefinite by appellant are "use," "addicted," and "under the influence of." These are simple words whose meanings should be known to all.

The requirements of reasonable certainty do not preclude the use of ordinary terms to express ideas which find adequate interpretation in common use and understanding.

Sproles v. Binford, 286 U. S. 374, 393, 76 L. Ed. 1167, 1182.

The plain words of a statute must be given the meaning naturally attributable to them.

United States v. Resnick, 299 U. S. 207, 81 L. Ed. 127.

Furthermore, the rule of strict construction of criminal statutes does not require that the narrowest technical meaning be given to the words employed, in disregard of their context, and in frustration of the obvious legislative intent.

United States v. Corbett, 215 U. S. 233, 54 L. Ed. 173;

United States v. Branblett, 348 U. S. 503, 99 L. Ed. 594;

United States v. Turley, 352 U. S. 407, 1 L. Ed. 2d 430.

In determining whether a statute is invalid on the ground of vagueness, the applicable standard is not one of wholly consistent academic definition of abstract terms; it is rather, the practical criterion of *fair notice* to those to whom the statute is directed. The particular context is all important.

> *American Communications Ass'n v. Douds,* 339 U. S. 382, 94 L. Ed. 925.

As stated by Mr. Justice Clark, dissenting in *United States v. Five Gambling Devices, etc.,* 346 U. S. 441, 458, 98 L. Ed. 179, 192:

> "The certainty required by the Due Process Clause is not tested from the would-be violator's standpoint; the test is rather whether adequate guidance is given to those would be law abiding. See *Musser v. Utah,* 333 U. S. 95, 97, 92 L. ed. 562, 565, 68 S. Ct. 397 (1948)."

The statute in question employs words of long usage and well known meanings. Its terms should enable a person honestly seeking to comply with the law to pursue an acceptable course of conduct without undue difficulty.

Appellant urges that the Legislature of the State of California has clearly indicated its definition of "drug addict" and "narcotic addict" and that such definition conflicts with that used by the court in instructing the jury. To support this position he cites Section 5250 of the California Welfare and Institutions Code. He means Section 5350. Such section provides:

> "A 'narcotic drug addict' within the meaning of this article is any person who habitually takes or otherwise uses to the extent of having lost the

power of self-control any opium, morphine, cocaine, or other narcotic drug as defined in Article 1 of Chapter 10 of the Health and Safety Code.

"Whenever in this article the term 'drug addict' is used, such term shall be construed to refer to and mean 'narcotic drug addict' as defined in this section. All persons heretofore committed or admitted as drug addicts to any state hospital, or committed to the Department of Mental Hygiene for placement therein, shall be deemed to have been committed or admitted as narcotic drug addicts. (Stats. 1937, c. 369, p. 1139, sec. 5350, as amended Stats. 1949, c. 1159, p. 2078, sec. 2.)"

A similar contention was before the District Court of Appeal of the State of California in *People v. Kimbley,* 189 Cal. App. 2d 300, 11 Cal. Rptr. 519, a case involving a violation of Section 23105 of the California Vehicle Code (a felony) (Appendix D), which prohibits a person addicted to the use of a narcotic drug driving a vehicle on a highway. The court stated:

"We are not impressed by the argument of defendant that because the Welfare and Institutions Code, in treating of the apprehension and commitment of incompetents in section 5350 defines a 'narcotic drug addict' as 'any person who habitually takes or otherwise uses to the extent of having lost the power of self-control any opium, morphine, cocaine or other narcotic drug as defined in Article 1 of Chapter 1 of Division 10 of the Health and Safety Code' the words 'addicted to the use' in section 23105 of the Vehicle Code should be construed as any person who uses narcotics 'to the extent of having lost the power of self-control.'

> We think the ordinary, dictionary definition of the word 'addicted' is clear and that it should not be distorted by a definition of a 'narcotic drug addict' used by the legislature for an entirely different purpose. . . . We hold that the word 'addicted' as used in the phrase 'addicted to the use' means accustomed or habituated to the use."

Such definition is substantially the same as that contained in the instruction to the jury in the instant case [Tr. 103].

E. Double Jeopardy Is Not Inherent in Section 11721 of the California Health and Safety Code.

Appellant next argues that Section 11721 of the California Health and Safety Code is violative of the Fourteenth Amendment to the United States Constitution because double jeopardy is inherent in a crime of status, and that once the addict has been convicted and the status established he may thereafter be continually punished for his single condition. This of course cannot happen.

It is well settled that, where a continuing offense is charged as having been committed within a stated period, an acquittal or conviction will bar another prosecution of the same offense alleged to have been committed within a period which overlaps any part of the former period.

Short v. United States, 91 F. 2d 614, 620.

Furthermore, appellant has not indicated that he has been subjected to or threatened with double jeopardy.

A litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage.

> *Dahnke-Walker Milling Co. v. Bondurant,* 257 U. S. 282, 289, 66 L. Ed. 239, 243.

The rule is well established that one will not be heard to attack a statute on grounds that are not shown to be applicable to himself and that a court will not consider every conceivable situation which might arise under the language of the statute and will not consider the question of constitutionality with reference to hypothetical situations.

> *In re Cregler,* 56 A. C. 298, 363 P. 2d 305, citing *United States v. Raines* (1960), 362 U. S. 17, 21-22, 4 L. Ed. 2d 524.

In *United States v. Raines, supra,* it was stated:

> "This court, as is the case with all federal courts, has no jurisdiction to pronounce any statute of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. In the exercise of that jurisdiction, it is bound by two rules, to which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."

Moreover, the due process clause of the Fourteenth Amendment does not apply to the states the provisions of the Fifth Amendment to the Constitution of the United States (*Palko v. Connecticut*, 302 U. S. 319, 82 L. Ed. 288; *Bartkus v. Illinois*, 359 U. S. 121, 3 L. Ed. 2d 684.)

F. The Statute in Question Does Not Impose an Unconstitutional Infringement on Freedom of Movement.

Undoubtedly freedom of movement is constitutionally protected (*Edwards v. California*, 314 U. S. 160; 86 L. Ed. 119; *Williams v. Fears*, 179 U. S. 270, 45 L. Ed. 186). However, such freedom is not absolute and is often subject to appropriate regulation (*California v. Thompson*, 311 U. S. 109-116, 75 L. Ed. 1219). Certainly the constitutional protection cannot be tortured to the extent that it must give license to a narcotic addict who by the very propensities of his condition, if uninterrupted, is certain to commit misdemeanors and felonies. To be addicted and use, the addict must necessarily possess narcotics. Such possession is a felony in California (Appendix I). Further, to gain possession he must buy or steal from other felons. This cannot be the kind of "new horizons" Mr. Justice Douglas had in mind in *Edwards v. California, supra*.

Again appellant has failed to establish that the statute in question has been or is about to be applied to his disadvantage in this respect. He has not contended that he is an addict whose freedom of movement has been impaired. Rather, he has denied being an addict at all [Tr. 66].

G. The Statute in Question Is Not "Ex Post Facto."

Appellant urges that the statute in question could be *ex post facto* as to persons who had become lawfully addicted to the use of narcotics prior to its enactment. A similar contention appeared in *Samuels v. McCurdy*, 267 U. S. 188, 69 L. Ed. 568, a case involving the illegal possession of intoxicating liquor acquired prior to the enactment of the statute. This court stated:

> "This is not an ex post facto law. It does not provide a punishment for a past offense. It does not fix a penalty for the owner having become possessed of the liquor. The penalty it imposes is for continuing to possess the liquor after the enactment of the law."

So in the instant case as to addiction to narcotics.

And once again appellant is in the position of seeking consideration of a constitutional question not applicable to him. He does not indicate that he has been subjected to punishment for an addiction commenced prior to the enactment of Section 11721 of the California Health and Safety Code. He denies being an addict at all [Tr. 66].

H. The Statute in Question Does Not Impose Cruel and Unusual Punishment.

Violation of Section 11721 of the California Health and Safety Code results in punishment of not less than 90 days nor more than one year in the county jail. Appellant himself as a result of his conviction was placed on probation for two years subject to certain terms, including 90 days to be served in the county jail [Tr. 6]. Certainly such sentence could not be

considered cruel or unusual (*Weems v. United States,* 217 U. S. 349, 54 L. Ed. 793). Furthermore, the "cruel and unusual" punishment provisions of the Eighth Amendment to the United States Constitution are not made applicable to the states by the Fourteenth Amendment (*Pervear v. Massachusetts,* 5 Wall, 475, 18 L. Ed. 608, *Weems v. United States, supra,* and *Bartkus v. Illinois,* 359 U. S. 121, 124, 3 L. Ed. 2d 684, 687).

III.
Appellant Was Not Subjected to an Illegal Search and Seizure.

As above stated, California adopted the exclusionary rule of illegally obtained evidence in *People v. Cahan* (1955), 44 Cal. 2d 434, 282 P. 2d 905. Appellant's trial was conducted according to such rule and his constitutional guarantees were given all due protection under it.

Without question the police officers had cause to stop the automobile in which appellant was a passenger. It was being operated in violation of Sections 24250 and 24601 of the California Vehicle Code (Appendix E, F), in that after dark the rear license plate was not illuminated. It became the duty of the officers on becoming aware of the violation to stop the vehicle and either warn the violator or issue a citation, and this regardless of the fact that the officers were in a plain unmarked vehicle [Tr. 16] rather than in a distinctively painted vehicle.

Section 40800 of the Vehicle Code of the State of California, as it existed at the time in question, provided:

"Every traffic officer shall wear a full distinctive uniform, and if the officer while so on duty uses a motor vehicle, it must be painted a distinctive color specified by the commissioner.

"This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to any theft of a vehicle or failure of a person to stop in the event of an accident or violation of Section 23109 or in reference to any felony charge, or to any officer engaged in serving any warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws. (Stats. 1959, c. 3, p. 1780, sec. 40800.)"

Section 625 of such code as it existed at the time in question, provided:

"A 'traffic officer' is any member of the California Highway Patrol and any peace officer when such member or officer is on duty for the exclusive or main purpose of enforcing the provisions of Division 10 or 11 of this code. (Stats. 1959, c. 3, p. 1639, sec. 626.)"

It is apparent that the officers who arrested appellant were on duty assigned to a "felony unit" [Tr. 16] and were not on duty for the exclusive or main purpose of enforcing Division 10 or 11 of the California Vehicle Code. Furthermore, Division 10 of such code involves and is entitled "Accidents and Accident Reports." Division 11 involves and is entitled "Rules of the Road." Sections 24250 and 24601, the violation of which resulted in the stopping of the vehicle in question, appear in *Division 12* of the California Vehicle Code, which involves and is entitled "Equipment of

Vehicles," and enforcement of such sections is in no way limited by the provisions of Section 40800.

It must be emphasized that no search of any kind occurred as a result of the stopping of this vehicle for the traffic violation [Tr. 23]. The driver, Mr. Banks, voluntarily got out of the vehicle and approached Officer Brown before the officer had even reached the vehicle [Tr. 22-23]. The officer then observed Mr. Banks' arms which were uncovered and exposed to view [Tr. 17].

A search implies a prying into hidden places for that which is concealed and that the object searched for has been hidden or intentionally put out of the way.

People v. Fitch (1961), 189 Cal. App. 2d 398, 11 Cal. Rptr. 273;

People v. Spicer (1957), 163 Cal. App. 2d 678, 329 P. 2d 917.

A mere looking at that which is open to public view is not a search.

People v. West (1956), 144 Cal. App. 2d 214, 300 P. 2d 729;

People v. Fitch, supra.

Following this observation by Officer Brown, Mr. Banks stated that he used narcotics [Tr. 20]. The officer was thus confronted with a suspect who showed physical evidence of the use of narcotics and who admitted he violated the law in this respect. Certainly such circumstances should give the officer reasonable cause to believe that appellant had committed a public offense in his presence, that is, violation of Section 11721 of the California Health and Safety Code, addiction to the use of narcotics, a misdemeanor (Ap-

pendix B). Additionally, such circumstances constitute probable cause to believe that appellant had committed a felony, possession of narcotics, a violation of Section 11500 of the California Health and Safety Code (Appendix J), as one who uses or is addicted to the use of narcotics must at some time possess them. In this respect the facts are almost identical to those in *People v. Smith* (1956), 141 Cal. App. 2d 399, 296 P. 2d 913. There the officer had stopped for a traffic violation a vehicle in which the appellant was a passenger. The driver was discovered to be a user of narcotics. Appellant having gotting out of the car onto the sidewalk was asked if he was a user of narcotics. He stated that he was. An examination of his arms, determined by the court to be with his consent, disclosed needle marks. The court held these circumstances sufficient grounds for belief that such appellant had committed a felony—possession of narcotics.

In the instant case, as to Mr. Banks, a reasonable belief as to the commission of either the misdemeanor or the felony was grounds for a valid arrest without a warrant under California Penal Code Section 836. Such section provides:

> "A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person:
>
> 1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.
>
> 2. When a person arrested has committed a felony, although not in his presence.
>
> 3. Whenever he has reasonable cause to believe that the person to be arrested has committed a

felony, whether or not a felony has in fact been committed. (As amended Stats. 1957, c. 2147, p. 3805, sec. 2)."

Reasonable or probable cause is shown if a man of ordinary care and prudence would be led to believe and concientiously entertain an honest and strong suspicion that the accused is guilty.

People v. Torres (1961), 56 A. C. 882, 366 P. 2d 823;

People v. Ingle (1960), 53 Cal. 2d 407, 348 P. 2d 577.

Therefore, any subsequent search of Mr. Banks or his vehicle was incident to a valid arrest.

A search made incident to a valid arrest is proper.

People v. Torres, supra;

People v. Hammond (1960), 54 Cal. 2d 846, 357 P. 2d 289;

People v. Ingle, supra.

It is proper to search an arrestee's vehicle.

People v. Gale (1956), 46 Cal. 2d 253, 294 P. 2d 13;

People v. Martin (1956), 46 Cal. 2d 106, 108, 293 P. 2d 52;

People v. Blodgett (1956), 46 Cal. 2d 114, 293 P. 2d 57.

Thus it would have been proper to remove appellant and the other two passengers from the vehicle to conduct the search.

Up to this point appellant and the two other passengers had in no way been delayed except as made

necessary by the activities of Mr. Banks. Concededly, appellant by the time he had been removed from the car had done nothing giving rise to any probable cause to arrest him.

Appellant was then searched cursorily for offensive weapons. This was not unreasonable. The driver of the vehicle had already been arrested on a serious charge, a charge that would lead any cautious officer to look to his personal safety.

Where the circumstances appear to warrant it, the police are entitled to ask the person in a car to get out, and where it seems appropriate the police are justified in taking precautionary measures by way of searching for weapons to insure their own safety.

People v. Davis (1961), 188 Cal. App. 2d 718, 10 Cal. Rptr. 610;

People v. Martin (1956), 46 Cal. 2d 106, 293 P. 2d 52.

This particular search for weapons disclosed nothing [Tr. 23, 24]. The officer then questioned appellant regarding his apparent nervous condition [Tr. 24]. This was proper in light of the appearance of appellant's eyes and the arrest of his companion on a narcotics charge. While this may not have constituted probable cause sufficient to justify a search or arrest of appellant, it was sufficient to spur the officer to interrogate him.

The existence of facts constituting probable cause to justify an arrest is not a condition precedent to such an investigation.

People v. Ellsworth (1961), 190 Cal. App. 2d 844, 847, 12 Cal. Rptr. 433;

People v. Blodgett (1956), 46 Cal. 2d 114, 117, 293 P. 2d 57.

The courts of California have consistently adhered to the proposition that a police officer may question a person outdoors at night when the circumstances are such as would indicate to a reasonable man in like position that such a course is necessary to the discharge of his duties.

People v. Ellsworth (1961), 190 Cal. App. 2d 844, 846, 12 Cal. Rptr. 433;

People v. Blodgett (1956), 46 Cal. 2d 114, 117, 293 P. 2d 57;

People v. Murphy (1959), 173 Cal. App. 2d 367, 377, 343 P. 2d 273;

People v. Jackson (1958), 164 Cal. App. 2d 759, 761, 331 P. 2d 63;

People v. Wiley (1958), 162 Cal. App. 2d 836, 839, 329 P. 2d 823;

People v. Ambrose (1957), 155 Cal. App. 2d 513, 521-522, 318 P. 2d 181;

People v. West (1956), 144 Cal. App. 2d 214, 216-219, 300 P. 2d 729;

People v. Jiminez (1956), 143 Cal. App. 2d 671, 673, 300 P. 2d 68;

People v. Jaurequi (1956), 142 Cal. App. 2d 555, 560, 298 P. 2d 896.

Such interrogation does not constitute an arrest even though the person interrogated may be detained momentarily.

People v. Sanchez (1961), 191 Cal. App. 2d 783, 12 Cal. Rptr. 906;

People v. Ellsworth (1961), 190 Cal. App. 2d 844, 12 Cal. Rptr. 433;

People v. Davis (1961), 188 Cal. App. 2d 718, 10 Cal. Rptr. 610;

People v. Michael (1955), 45 Cal. 2d 751, 290 P. 2d 852;

People v. Hood (1957), 149 Cal. App. 2d 836, 309 P. 2d 135;

People v. Martin (1955), 45 Cal. 2d 755, 290 P. 2d 855.

Up to this point appellant had not been arrested nor had he been subjected to a search other than for weapons, and no evidence to be used against him had been revealed.

Upon commencement of the interrogation appellant forthwith stated "Yes, I use narcotics," and further stated that he wasn't hooked, that he hadn't used narcotics in approximately two months, that his friends came by his house and he used their narcotics, their outfits; that he had never bought narcotics and that he hadn't used narcotics in two weeks [Tr. 24].

This statement coupled with appellant's appearance fulfilled the requirements of Section 836 of the California Penal Code for arrest without a warrant by giving the arresting officer reasonable cause to believe that appellant had committed a public offense in his presence by being under the influence of or addicted to the use of narcotics, a misdemeanor under Section 11721 of the California Health and Safety Code. In

that an addict or user must at some time possess, these circumstances also gave the officer reasonable cause to believe that appellant had committed a felony, illegal possession of narcotics under Section 11500 of the California Health and Safety Code (Appendix I) (*People v. Smith, supra*).

While the record does not clearly disclose whether the inspection of appellant's arms was made prior or subsequent to his actual arrest, the order does not affect the validity of the search.

Where an arrest is lawful the search incident thereto is not unlawful merely because it precedes rather than follows the arrest.

People v. Torres (1961), 56 A. C. 882, 366 P. 2d 823;

People v. Hammond (1960), 54 Cal. 2d 846, 557 P. 2d 289;

People v. Ingle (1960), 53 Cal. 2d 407, 348 P. 2d 577.

Thus under the exclusionary rule as adopted and interpreted by the California courts the arresting officer had at hand sufficient facts for a valid arrest and search of appellant. No illegally obtained evidence was introduced against him at his trial.

IV.

California's Exclusionary Rules Do Not Fall Short of Providing the Protection Afforded by the Fourth and Fourteenth Amendments to the United States Constitution.

Mapp v. Ohio, 367 U. S. 643, 6 L. Ed. 2d 1081 (1961), has of course brought through the Due Process Clause of the Fourteenth Amendment the protection of the Fourth Amendment to those tried in the state courts. In adopting the exclusionary rule in 1955 in *People v. Cahan, supra,* the California Supreme Court stated:

> ". . . In developing a rule of evidence applicable to the state court, this court is not bound by the decisions that have applied the federal rules, and if it appears that those decisions have developed needless refinements and distinctions, this court need not follow them. . . . Instead it opens the door to the development of workable rules governing searches and seizures and the issuance of warrants that will protect both the rights guaranteed by the constitutional provisions and the interest of society in the suppression of crime."

Since *Mapp v. Ohio,* California courts have in *People v. Tyler* (1961), 193 A. C. A. 779, 14 Cal. Rptr. 610, and *People v. Rucker* (1961), 187 A. C. A. 17, 17 Cal. Rptr. 98, stated that there appears to be nothing in the *Mapp* case to indicate that the states are bound to follow the federal requirements of reasonable and probable cause instead of their own.

Though it could be argued that somewhere events of the future might show this statement to be unduly broad, certainly as applied to California's exclusionary rules it is appropriate.

California rules as applied in this case closely parallel the equivalent federal rules.

This court, as to the federal rule on probable cause, stated in *Henry v. United States,* 361 U. S. 98, 4 L. Ed. 2d 134:

> "Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed."

Such is substantially the same as the California rule expressed in *People v. Torres* (1961), 56 A. C. 882, 366 P. 2d 823 (*supra*), and *People v. Ingle* (1960), 53 Cal. 2d 407, 348 P. 2d 577, *supra.* The *Henry* case is cited as authority in the latter case.

Under the federal exclusionary rule a search made incident to a lawful arrest is proper (*Henry v. United States, supra, Carrol v. United States,* 267 U. S. 132, 69 L. Ed. 543, *United States v. Di Re,* 332 U. S. 581, 92 L. Ed. 210). And in the latter case (*United States v. Di Re*) this court stated that in the absence of an applicable federal statute the law of the state where an arrest without a warrant takes place determines its validity.

Since 1955, California has afforded defendants the protection of the Fourteenth and Fourth Amendments under an exclusionary rule substantially the same as that followed in the federal courts, the decisions of which indeed have been instrumental in the development of the California rule (See *People v. Brown* (1955), 46 Cal. 2d 640, 290 P. 2d 528; *People v. Simon* (1955), 46 Cal. 2d 645, 290 P. 2d 531; *People v. Michael* (1955), 45 Cal. 2d 751, 290 P. 2d 852; *People v. Gorg* (1955), 45 Cal. 2d 776, 291 P. 2d 469; *People v. Martin* (1956), 46 Cal. 2d 106, 293 P. 2d 52; *People v. Gale* (1956), 41 Cal. 2d 253, 294 P. 2d 13).

V.

The Evidence Is Sufficient to Support the Judgment.

Appellant at page 40 of his brief concedes that the case is to be submitted upon the view of the evidence most favorable to the appellee, under the usual approach in this regard.

Recognizing that to convict and punish a man without evidence of his guilt would be a violation of due process of law *(Thompson v. Louisville,* 362 U. S. 199, 4 L. Ed. 2d 654), the evidence introduced against appellant as set out in the statement of the case, *supra,* and viewed in the light most favorable to appellee, clearly established appellant's illegal use of and addiction to narcotics.

On review here of state convictions, all those matters which are termed issues of fact are for conclusive determination by the state courts and are not open for reconsideration by this court. Observance of this restriction in our review of state courts calls for the utmost scruple.

> *Hoag v. New Jersey,* 356 U. S. 464, 2 L. Ed. 2d 913.

As to appellant's contention that the complaint filed against him should have indicated the particular narcotic involved in the commission of the offense, California courts have consistently held that it is proper to plead in the words of the statute. *(People v. Pierce* (1939), 14 Cal. 2d 639, 96 P. 2d 784; *People v. McKenna* (1953), 116 Cal. App. 2d 207, 255 P. 2d 452; *People v. Randazzo* (1957), 48 Cal. 2d 484, 310 P. 2d 413.)

Conclusion.

The judgment of the Appellate Department of the Superior Court for the State of California should be affirmed.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,

PHILIP E. GREY,
Assistant City Attorney,

WM. E. DORAN,
Deputy City Attorney,

Attorneys for Appellee.

APPENDIX A.

(File endorsement omitted)

In the Appellate Department of the Superior Court
County of Los Angeles, State of California

Superior Court No. CR A 4425

Trial Court No. 114162

People of the State of California, Plaintiff and Respondent,

v.

Lawrence Robinson, Defendant and Appellant.

MEMORANDUM OPINION—

March 31, 1961

Appeal by defendant from order granting probation (referred to as "judgment" in notice of appeal) and order denying motion for new trial, of the Municipal Court of the Los Angeles Judicial District, Kenneth L. Holaday, Judge. Affirmed.

For Appellant—
Samuel C. McMorris, Esq.

For Respondent—
Roger Arnebergh, City Attorney
Philip E. Grey, Assistant City Attorney
William E. Doran, Deputy City Attorney

The defendant was convicted of violating Health and Safety Code Section 11721 which provides: "No person shall use, or be under the influence of, or be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics." He appeals from the order granting probation

(referred to as "judgment" in notice of appeal) and order denying a new trial.

Appellant's principal point is that the section, or at least the provision making it a misdemeanor to be addicted to the use of narcotics, is unconstitutional in that it is vague, indefinite and uncertain. It is a crime of status. This court has held in a number of cases that the section is constitutional. In *People v. Bunn* (1959), our CR A 4062, we said: "There is no merit in the claim [of appellant] that Health and Safety Code 11721 is unconstitutional because it makes being a narcotic addict a misdemeanor." To the same effect is *People v. Donlin* (1960) our CR A 4422. We shall, therefore, follow the rule of stare decisis. However, we are not unmindful that the Supreme Court, *In re Newbern* (1960), 53 Cal. 2d 786, held that Penal Code 647 subsec. 11, which made it a misdemeanor to be a common drunkard, was so vague and uncertain that it was unconstitutional. This might cause the higher courts to review the crime of being a narcotic addict or any crime of status. Although at present no appeal lies from the appellate department of the Superior Court to the District Court of Appeal or the Supreme Court, yet habeas corpus lies to test the constitutionality of the section in question. We would welcome such a test.

Appellant also claims that the court erred in not submitting to the jury the foundation evidence as to whether the search and seizure was lawful. The court acted properly in receiving this evidence outside the presence of the jury. The sufficiency of that foundation evidence is a question of law. In *People v. Gorg* (1955), 45 Cal. 2d 776, the court said at p. 781: "The proba-

tive value of evidence obtained by a search or seizure, however, does not depend on whether the search or seizure was legal or illegal, and no purpose would be served by having the jury make a second determination of that issue."

We have considered all other points urged by appellant and find them without merit.

The order granting probation and order denying motion for new trial are affirmed.

Dated: March 31, 1961.

SWAIN
Presiding Judge

We concur:
HULS Judge
SMITH Judge

APPENDIX B.

Health and Safety Code
of the State of California.

Section 11721. No person shall use, or be under the influence of, or be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating any provision of this section is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days nor more than one year in the county jail. The court may place a person convicted hereunder on probation for a period not to exceed five years and shall in all cases in which probation is granted require as a condition thereof that such person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this section from the obligation of spending at least 90 days in confinement in the county jail. (As amended California Statutes of 1957, c. 1064, p. 2343, Sec. 1.)

APPENDIX C.

Welfare and Institutions Code of the State of California.

Section 5350. A "narcotic drug addict" within the meaning of this article is any person who habitually takes or otherwise uses to the extent of having lost the power of self-control any opium, morphine, cocaine, or other narcotic drug as defined in Article 1 of Chapter 1 of Division 10 of the Health and Safety Code.

Wherever in this article the term "drug addict" is used, such term shall be construed to refer to and mean "narcotic drug addict" as defined in this section. All persons heretofore committed or admitted as drug addicts to any state hospital, or committed to the Department of Mental Hygiene for placement therein, shall be deemed to have been committed or admitted as narcotic drug addicts. (Stats. 1937, c. 369, p. 1139, Sec. 5350, as amended Stats. 1949, c. 1159, p. 2078, Sec. 2.)

APPENDIX D.

Vehicle Code of the
State of California.

Section 23105. Narcotics. It is unlawful for any person who is addicted to the use, or under the influence, of narcotic drugs or amphetamine or any derivative thereof to drive a vehicle upon any highway. Any person convicted under this section is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for not less than one year nor more than five years or in the county jail for not less than 90 days nor more than one year or by a fine of not less than two hundred dollars ($200) nor more than five thousand dollars ($5,000) or by both such fine and imprisonment. (Stats. 1959, c. 3, p. 1708, sec. 23105.)

APPENDIX E.

Vehicle Code of the
State of California.

Section 24250. *Lighting during darkness.* During darkness, a vehicle shall be equipped with lighted lighting equipment as required for the vehicle by this chapter. (Stats. 1959, c. 3, p. 1714, sec. 24250.)

APPENDIX F.

Vehicle Code of the
State of California.

Section 24601. *License plate light.* Either the rear lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear license plate and render it clearly legible from a distance of 50 feet to the rear. When the rear license plate is illuminated by a lamp other than a required rear lamp, the two lamps shall be turned on or off only by the same control switch at all times and the light source of the additional lamp shall have a minimum of three standard candlepower and a maximum of 15 standard candlepower. (Stats. 1959, c. 3, p. 1717, sec. 24601.)

APPENDIX G.

Vehicle Code of the
State of California.

Section 40800. *Vehicle and uniform used by officers.* Every traffic officer shall wear a full distinctive uniform, and if the officer while so on duty uses a motor vehicle, it must be painted a distinctive color specified by the commissioner.

This section does not apply to an officer assigned exclusively to the duty of investigating and securing evidence in reference to any theft of a vehicle or failure of a person to stop in the event of an accident or violation of section 23109 or in reference to any felony charge, or to any officer engaged in serving any warrant when the officer is not engaged in patrolling the highways for the purpose of enforcing the traffic laws. (Stats. 1959, c. 3, p. 1780, sec. 40800.)

APPENDIX H.

Vehicle Code of the
State of California.

Section 625. *Traffic officer.* A "traffic officer" is any member of the California Highway Patrol and any peace officer when such member or officer is on duty for the exclusive or main purpose of enforcing the provisions of Division 10 or 11 of this code. (Stats. 1959, c. 3, p. 1539, sec. 625.)

APPENDIX I.

Health and Safety Code of the State of California.

Section 11500. Except as otherwise provided in this division, every person who possesses any narcotic other than marijuana except upon the written prescription of a physician, dentist, chiropodist, or veterinarian licensed to practice in this State, shall be punished by imprisonment in the county jail for not more than one year, or in the state prison for not more than 10 years.

If such a person has been previously convicted of any offense described in this division or has been previously convicted of any offense under the laws of any other state or of the United States which if committed in this State would have been punishable as an offense described in this division, the previous conviction shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or is admitted by the defendant, he shall be imprisoned in the state prison for not less than two years nor more than 20 years. (Stats. 1959, c. 1112, p. 3193, sec. 3.)

APPENDIX J.

Penal Code of the
State of California.

Section 836. *Peace officers; arrest under warrant; grounds for arrest without warrant.*

A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person:

1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed. (As amended Stats. 1957, c. 2147, p. 3805, sec. 2.)